

## **REMARKS**

The comments of the Examiner as set forth in the Office Action dated **03/16/2007**, have been carefully studied and reviewed. This Amendment and Response to Office Action is submitted in response to that Office Action. Favorable reconsideration of this application as presently amended is respectfully requested for the reasons set forth below.

### ***I. STATUS OF CLAIMS***

Claim 1 is amended; and Claims 2-14, and 17-35 are withdrawn from consideration at this time without prejudice. Applicant retains the right to later assert the withdrawn claims, and/or the limitations within the withdrawn claims, in subsequent amendments or applications, such as continuation applications. Claims 1, 15, and 16 are now pending.

### ***II. CLAIM REJECTIONS UNDER - 35 U.S.C. § 102***

#### **Summary Of Rejections**

Claims 1-2, 6, 8-17, 19-23 and 27-34 rejected under 35 U.S.C 103(a) as being unpatentable over Ciolino US-5,149,314 (hereinafter "*Ciolino*") et al in view of Swann US-4,403,773 (hereinafter "*Swann*").

In regard to the claims *Ciolino* discloses a device comprising a conformable base and removable elastic resistance arms (14) having removable handles (17).

*Ciolino* however does not disclose his device as including resistance arms, which have multiple levels of resistance of various strengths.

*Swann* however teaches the usage of multiple arm members of various strengths positioned at various positions around an exercising mat. The resistance members 26 being disclosed as having different strengths.

Given the above teachings of *Swann* the examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture the arm members (14) of *Ciolino et al* of various strengths so as to provide the device of *Ciolino et al* with the capability to vary the amount of tension applied to the limbs of a user.

*Ciolino et al* discloses his device as being inflatable his resistance arms as being removable his handles as being removable, the device as including vinyl.

In regard to claim 15, the examiner notes that the handles (17) are being considered also as fixtures which will accept at least one of the users feet see figs. 8.

In regard to claim 22, the examiner notes that it would have been obvious to one of ordinary skill in the art at least four exercising arms on the device of *Ciolino* for the purpose of exercising the arms and legs of a user simultaneously in view of the at least four members of *Swann*.

In regard to claims 23 and 27-34 the examiner considers the method claims as obvious in view of the combined disclosure of *Ciolino et al* in view of *Swann*.

Claims 1, 6, 7 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Orcutt US-5,810,700 (hereinafter "*Orcutt*").

Orcutt in its broadest interpretation discloses an exercising device comprising a conformable base and, a plurality of arms capable of providing multiple levels of resistance for each training exercise. See col. 3 lines 18-24.

In regard to claim 7, Orcutt teaches length adjustability.

In regard to claim 18, note the shape of Orcutt.

Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

### Discussion

None of these prior art references anticipate the invention as amended in the claims.

*Ciolino* does not disclose the invention claimed. *Ciolino* does not illustrate a spherical exercise device to be used on land, but instead claims "an apparatus to provide support and buoyancy to a user during an exercise routine performed in an aquatic environment". *Ciolino's* device is made up of 3 separate "flotation sections" connected by "hinges" so that the "first, second and third flotation sections form a substantially elongated float". *Ciolino's* invention is a long float made up of 3 separate rectangular units designed to be operated only in an aquatic environment. Nowhere in the specification does *Ciolino* teach or even contemplate a training device with a spherical base designed to be used on land, as claimed by Applicant. Thus, *Ciolino* does not anticipate Claims 1, 15 and 16, and the rejections of Claims 1, 15 and 16 as amended, have been overcome.

*Swann* does not disclose the invention claimed. *Swann's* device instead claims an "elongated rectangular flat and immovable support" as its base. *Swann* does not teach or even contemplate a training device with a spherical base to conform to a user's body during exercise, as claimed by Applicant. Applicant's invention requires constant core training of a user's trunk and upper legs to stabilize the device during exercise, secondary to the movable spherical shape of its base. Hence, *Swann* does not anticipate Claims 1, 15 and 16, and the rejections of Claims 1, 15 and 16 as amended, have been overcome.

*Orcutt* does not disclose the invention claimed. *Orcutt* does not claim or show more than one point of resistance or more than one attachment location for receiving resistance members. None of *Orcutt*'s variations teach more than one point of resistance or more than one attachment location for receiving resistance members. *Orcutt* writes about "two or more separate resistance members", but only allows for one attachment location. *Orcutt* explains that "multiple connect points for one or more resistance members" entails including multiple connect points in the same "coupling assembly 17" which limits *Orcutt*'s device to one attachment point and only one point of resistance.

*Orcutt*'s one "coupling assembly 17" may be placed in "any number of locations" but it can only be in one position at a time. Nothing in *Orcutt* teaches or contemplates 3 or more different attachment positions as does Applicant, which affords users of Applicant's device greater flexibility to carry out a more thorough exercise regimen. By utilizing the 3 or more attachment locations for receiving a plurality of resistance members, users of Applicant's device can change between exercises faster, exercise more muscles and apply a greater degree of resistance throughout more planes of movement. This teaching in *Orcutt* unnecessarily limits the flexibility and variation possible with *Orcutt*'s apparatus and, thus, teaches away from the greater variation and flexibility afforded by Applicant's device. Therefore, Claims 1, 15 and 16 are not anticipated by *Orcutt* and the rejections of Claims 1, 15 and 16 as amended, have been overcome.

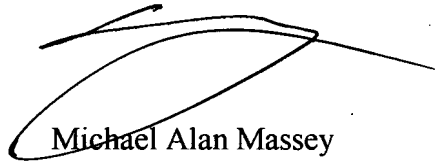
### **III. CONCLUSION**

In view of the foregoing remarks, Applicant respectfully submits that all pending claims are allowable over the art of record and respectfully requests a Notice of Allowance.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Alan Massey", is written over the printed name and address.

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